REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the present amendment and in light of the following discussion, is respectfully requested.

Claims 20-30, 32, 33, and 35-41 are pending. In the present amendment, Claims 33, 39, and 40 are currently amended. Support for the present amendment can be found in the original specification, for example, at page 13, lines 6-34, at page 14, line 33 to page 15, line 30, and in Figure 10. Thus, it is respectfully submitted that no new matter is added.

In the outstanding Office Action, Claims 20-23, 25, 27, 28, 30, and 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Scott (U.S. Patent No. 2,172,091) in view of Royce et al. (U.S. Patent No. 4,223,780, hereinafter "Royce"); and Claims 33 and 35-41 were rejected under 35 U.S.C. § 103(a) as unpatentable over Scott in view of Kennedy (U.S. Patent No. 5,584,143).

In response to the rejections under 35 U.S.C. § 103(a), Applicants respectfully request reconsideration of these rejections and traverse these rejections, as discussed below.

Independent Claim 20 recites a seal comprising a body that "is made of a single flexible material having a Shore A hardness of between 40 and 60." The Office Action again cites Scott in view of Royce to reject independent Claim 20 and states in the second paragraph on page 4 that "there is nothing novel about forming a weather-strip having a Shore A hardness between 40-60." Applicants respectfully traverse this assertion.

Scott describes a weather strip 28 that appears to be made of a single material. However, as acknowledged in the Office Action, Scott is silent with regards to a Shore A hardness of the weather strip 28. Royce describes a seal 5 that is formed of a strip 13 and a bead 17. Royce describes that the strip 13 has a Shore hardness of 70 and that the bead 17 has a Shore hardness of 30 to 45.[1]

[1] See Royce, at column 2, lines 15-22 and in Figure 2.

The Office Action takes the position that it would be obvious to a person of ordinary skill in the art to make the Shore hardness of the weather strip 28 of Scott equal to the claimed Shore A hardness based on Royce. In support, the Office Action states that "it was well known to form weather seals with different hardnesses based on experimental scientific data and desirability, as well as the environment."

However, the Office Action does not address the fact that the claimed Shore A hardness is for a seal ***made of a single flexible material***. Instead, as discussed above, Royce only describes the shore hardness of 30 to 45 for a portion of the seal, not for the entire body thereof. Further, Royce ***teaches away*** from using a single material with a Shore A hardness of less than 70 for the seal 5, stating that such a soft gasket material would still produce internal stresses within a door having the seal 5.[2]

Therefore, Scott is silent with regard to a Shore A hardness and Royce teaches away from having a seal made entirely of a material have a Shore A hardness within the claimed range. Further, although the Office Action takes the above-quoted position that is well known to form weather seals with different hardnesses, the Office Action does not cite any evidence of a seal made entirely of a single material having the claimed Shore A hardness. As stated in M.P.E.P. § 2144.03, "[i]t is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based" (citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ 2d 1693, 1697 (Fed. Cir. 2001)).

Therefore, it is respectfully submitted that the combination of Scott and Royce cited in the Office Action does not disclose or suggest every feature recited in independent Claim 20. Thus, it is respectfully requested that the rejection of Claim 20, and all claims dependent thereon, be withdrawn.

[2] See Royce, column 1, lines 16-37.

Independent Claim 33 recites a glazing panel comprising a housing including at least two glass panes spaced apart by a spacer and a seal. Further, the seal is made of a single flexible material and the two side walls of the seal contact the two glass panes such that the width of the base-piece in the vicinity of the end on the opposite side from the shoulders is compressed to the width of the housing. As can be seen from Figures 3 and 10, the glass panels contact the side walls to compress the width of the housing. It is respectfully submitted that the cited references do not disclose or suggest every feature recited in independent Claim 33.

The Office Action again combines the weather strip 28 described in Scott with the double glass pane assembly described in Kennedy to reject Claim 33. The last paragraph of page 4 extending onto page 5 of the Office Action states that "[w]hen the weather-strip of Scott is inserted between two panes of glass, the trapezoidal shape (being wider than the opening) would be compressed and provide friction between the two panes thereby holding the seal in a fixed position between the two panes of glass. To provide a weather-strip between two panes of glass and/or provide two panes of glass with a trapezoidal shape weather-strip and the end of the two panes of glass would have been obvious to one of ordinary skill in the art at the time of the invention. One would easily look to Scott and Kennedy to provide a trapezoidal shaped weather-strip at the ends of and in between two panels of glass." Applicants respectfully traverse this assertion.

Instead, in reviewing Scott, a person of ordinary skill in the art would see that the weather strip 28 is secured in place with a U-shaped member 26, and thus ***is not wedged between two panes of glass***. Instead, the sides of the weather-strip 28 do not even contact panes of glass since they are held in place by the U-shaped member 26.

Further, if a person of ordinary skill in the art were to turn to Kennedy to see how the gasket 30 of Kennedy is attached to the glass panes 12, 14, the person of ordinary skill in the

art would realize that the seal 30 ***does not contact the glass panes 12, 14***. Instead, the seal 30 is attached to a connection part 70 of the spacer 40 and is also held in place with a sealant compound 22. Therefore, neither reference discloses or suggests a seal comprised of a single material that is compressed by contacting the glass panes which it is sealing.

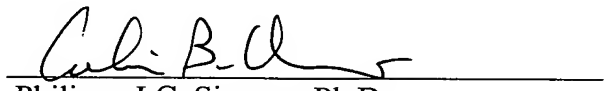
The Office Action states that "the applicant again argues the references individually and not the combination thereof." As discussed above, neither reference teaches compressing the seal with the glass pane, and the Office Action does not cite any other evidence in which the seal is compressed by the glass pane. Thus, if the weather strip 28 of Scott is combined with the glass panes 12, 14 of Kennedy, then a person of ordinary skill in the art would attach the weather strip with a U-shaped member 26 (as described in Scott) or directly to the spacer 40 with the aid of a sealant 22 (as described in Kennedy). Accordingly, it is respectfully submitted that no combination of Kennedy and Scott, without the hindsight bias applied after reviewing the present application, discloses or suggests that the seal would be compressed by the glass panes.

Therefore, the conclusory position taken in the Office Action that it would have been obvious to a person of ordinary skill in the art to place the seal in a position to be compressed by the glass is improper and should be withdrawn. Accordingly, Applicants respectfully request that the rejection of Claim 33, and all claims dependent thereon, as unpatentable over Scott in view of Kennedy be withdrawn.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. A Notice of Allowance is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Philippe J.C. Signore, Ph.D.
Attorney of Record
Registration No. 43,922

Colin B. Harris
Registration No. 58,969

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/09)